

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

ATTY.'S DOCKET: SUGIMURA4

In re Application of:)	Office of the Deputy
)	Commissioner for Patent
Kazuhisa SUGIMURA et al.)	Examination Policy
)	
Patent No.: 7,482,436)	Washington, D.C.
)	
Patent Date: January 27, 2009)	Confirmation No.
)	
For: HUMAN ANTI-HUMAN...)	March 27, 2009

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT

Honorable Commissioner for Patents
U.S. Patent and Trademark Office
Customer Service Window
Randolph Building, Mail Stop Petitions
401 Dulany Street
Alexandria, VA 22314

Sir:

Pursuant to 37 CFR 1.705(d), reconsideration of the patent term adjustment indicated on the face of the above-identified patent is hereby requested.

In accordance with 37 CFR 1.705(b)(1), submitted herewith is the fee of \$200 as set forth in 37 CFR 1.18(e). If there is any underpayment or any other fee necessary for consideration of this request, please charge same to the deposit account no. 02-4035 of the undersigned.

The following statement of the facts involved is in compliance with 37 CFR 1.705(b)(2). The correct patent term adjustment is 761 days. The period of delay under 37 CFR 1.702(a) is 427 days, as properly calculated by the PTO. However, the PTO failed to take into account the non-overlapping period of delay under 37 CFR 1.702(b). The period of time from February 28, 2008 (three years after the Filing or 371(c) date) to issuance of the

patent on January 27, 2009, was 334 days.

37 CFR 1.703(f) provides that the periods of delay under 1.702 are added together “to the extent that such periods are not overlapping.” In *Wyeth v. Dudas*, 2008 U.S. Dist. LEXIS 76063, 88 USPQ2d 1538 (D.D.C. Sept. 30, 2008), the U.S. District Court for the District of Columbia held that only periods of actual calendar days overlap between the time periods of delay calculated under 1.702(a) and 1.702(b) are to be considered as overlap within the meaning of 1.703(f). Thus, in this case, there are no days of overlap as all of the 1.702(a) days of delay as shown on the “Patent Term Adjustments” page on the PAIR website for this patent are prior to February 28, 2008, the date that is three years after the Filing or 371(c) date, which is the date that the delay under 1.702(b) commenced.” The 427 days of 1.702(a) delay that occurred prior to the commencement of the 1.702(b) delay must be added to the 334 days of delay under 37 CFR 1.702(b) to determine the total PTO delay, as per the interpretation required by the *Wyeth* court.

Thus, the period of patent term adjustment by the interpretation approved by the court in *Wyeth v. Dudas, supra*, is $427 + 334 = 761$ days, minus any period attributed to applicant’s delay (37 CFR 1.704). The PTO calculated applicant’s delay as 0 days. Thus, using the PTO’s figures and the court’s interpretation, the correct period for patent term adjustment should have been 761 days, i.e., $761 - 0 = 761$ days. No terminal disclaimer has been filed in this case.

These issues could not have been raised on or before the date of payment of the issue fee as the period of adjustment under 1.702(b) did not become determined until the patent issued. Indeed, the PTO does not consider the effect of the 1.702(b) period until it mails the issue notification. Accordingly, this request for reconsideration of the patent term adjustment is timely under 37 CFR 1.705(d).

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Granting of this request and modifying the patent term adjustment afforded
this case to a total of [Insert {1} from above] days are therefore earnestly solicited.

Respectfully submitted,

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